

Chapter 316 Procedural Rules

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[History: Adopted by the Planning Board of the Town of Fairhaven 11-19-1970, as amended through 1-1-94. Subsequent amendments noted where applicable]

§ 316-1. General Provisions.

- A. Officers. The Planning Board shall elect a Chairman, Vice Chairman, Clerk annually at the first Board meeting following town elections. The Chairman shall not succeed more than once consecutively except on waiver of this rule by a two-thirds majority of the members voting. The Board shall at the same organizational meeting elect a delegate to the Southeastern Regional Planning and Economic Development District and select a representative to such other committees or organizations as may call for Planning Board appointments.
- B. Except in emergencies, persons wishing to meet with the Planning Board shall make appointment, to do so through the chairman or the Boards agent no later than noon of Monday preceding the meeting informing of the subject matter to be presented.
- C. In procedural matters not covered by these rules or by town bylaw or statute, the Board shall be guided by Robert's Rules of Order, as revised.

§ 316-2. Rezoning Applications

- A. The Planning Board will hold a Public Hearing on all Zoning amendments inserted in the Warrant for Town Meeting, or on any additional Zoning amendments they may elect to hear. In order to insure that a Public Hearing and the Planning Board report required by statute will be timely, petitioned articles for Zoning amendments should be submitted to the Planning Board by the Board of Selectmen not less 60 days prior to the date of the Town Meeting action.
- B. Petitioners for Zoning amendments need not own or have interests in the property affected.
- C. Requests for Zoning Map amendments shall be accompanied by 10 prints of a plan to scale, clearly showing the proposed referenced for location on the Town Zoning Map and relevant district and property bounds, structures, and natural features. The request shall also be accompanied by a written description of the proposed change, suitable for legal advertisement, plus a check made payable to the Town of Fairhaven to cover the appropriate fees found in the fee schedule. **[Amended 9-22-1998]**

- D. Parties directly affected by a proposed Zoning Amendment or Zoning Map change will be notified by card or letter of the date of the Public Hearing.
- E. Petitioner's have the responsibility of insuring for insertion in the Warrant by the Board of Selectmen.

§ 316-3. Plans not requiring subdivision approval

- A. Tracings must meet Registry of Deeds and Land Court requirements.
- B. The tracings, 10 prints and two copies of application for Form A shall be filed with the Planning Board's agent. The date of the next regular Planning Board meeting thereafter shall be the date of submission.
- C. A copy of the Form A shall be filed with the Town Clerk noting the date of submittal.

§ 316-4. Subdivision Plans.

- A. Developer Procedure - The following are the steps a developer must follow in having a subdivision made.
 - 1. To save costly alterations to expensive detailed plans a relatively undetailed preliminary plan should first be prepared and reviewed with the Planning Board, Board of Health, and Board of Public Works. (See § 322-7 of Chapter 322, Subdivision of Land). An engineer or surveyor will be best able to prepare this. The plan should include the items listed in § 322-7B of Chapter 322, Subdivision of Land, and be designed consistent with the standards in Part 4, Design Standards, of Chapter 322, Subdivision of Land. (For statute, see MGL c.41, §. 81S.)
 - 2. This Preliminary Plan that should be submitted to the Planning Board for approval. This means filing the original plan, 10 prints and a copy of the plan with the application Form B with the Planning Board's agent, a print of the plan with the Board of Health and a notice stating the date of submission and a copy of the Form B with the Town Clerk (MGL c.41, §. 81S.). The filing with the Town Clerk may be by delivery or by registered mail. The day of the next regular Planning Board meeting after filing with the Planning Board's agent will be the date of submission (Also see Chapter 306, Fees.)
 - 3. The preliminary plan will be reviewed by the Planning Board, Board of Health, Board of Public Works, and you can discuss with them their suggestion for the definitive plan. The Planning Board will take formal action on the plan and notify you of their action (See MGL c.41, §. 81S.).
 - 4. You then should have your definitive plan drawn by an engineer following requirements of § 322-7B of Chapter 322, Subdivision of Land.

5. When it is ready, the plan is submitted to the Planning Board for approval. This means filing with the Planning Board's agent the original Mylar, ten (10) prints of each, a copy of application Form C, a Check (see Chapter 306, Fee Schedule) for the required amount, made out to the Town of Fairhaven to pay for the hearing notices and a list of all abutter's taken from the latest tax lists. A copy of the Form C must be filed by delivery or by registered mail with the Town Clerk (See MGL c.41, §. 81T). One (1) print of the Plan is also to filed with the Board of Health (See MGL c.41, §. 81U.)
6. The Planning Board will then hold a Public Hearing on the Plan in accordance with § 322-8 of Chapter 322, Subdivision of Land (MGL c.41, §. 81T), which you or your representative should attend.
7. Following the hearing the Planning Board will act on the plan. (§ 322-7B of Chapter 322, Subdivision of Land, covers this.). The security is either covenant agreement (see Form D) prohibiting building permits or the sale of any lots until the improvements serving that lot are complete or a bond covering the cost of improvements not yet made allowing the town to use the bond to complete improvements if the developer should fail to do so or fail do to so quickly as agreed upon. (MGL c.41, §. 81U.) After it has security and after a twenty-day appeal period following approval, the Planning Board will sign the plan. You must then give them ten (10) prints of it. (MGL c.41, §. 81V).
8. The required land improvements are then made in accordance with your plan and consistent with Part 5, Required Improvements for an Approved Subdivision, of Chapter 322, Subdivision of Land.
9. When improvements are completed or completed for any substantial part of the subdivision, you may request a release of your security. (See Form E). Release is requested in writing by registered mail to the Planning Board with a copy by registered mail to the Town Clerk (MGL c.41, §. 81U).
10. Release of all security discharges your obligation to the town under Subdivision Control Law. However, it does not mean that roads have been accepted by the town, which is an entirely separate procedure.
11. Application review fees; special municipal account pursuant to Chapter 593, Acts of 1989 codified as MGL c.44, §. 53F.
 - a. When a Subdivision application (Form B) and preliminary plans are submitted to the Planning Board or, in the absence of preliminary plans, when a subdivision application (Form C) and definitive plans are submitted to the Planning Board, a review fee for the use of outside consultants will be required. This fee will be determined by the size of the project and may be waived by the Board for subdivision containing 5 lots or less.
 - [1] Zero (0) to thirty (30) acres: one thousand dollars (\$1,000) or one percent (1%) of subdivision improvement costs, whichever is greater.

[2] Over thirty (30) acres: one thousand five hundred dollars (\$1,500) or one percent (1%) of subdivision improvement costs, whichever is greater.

- b. In hiring outside consultants, the Planning Board may engage engineers, planners, lawyers, urban designers or other appropriate professionals who can assist the Board in analyzing a project to ensure compliance with all state laws and town regulations.
 - c. Funds received by the Planning Board pursuant to this section shall be deposited with the Fairhaven Treasurer who shall establish a special account for the purpose. Expenditures from this special account may be made at the direction of the Board without further appropriation. Expenditures from this special account shall be made only in connection with the review of a subdivision application for which a review fee has been collected from the applicant. Failure of an applicant to pay a review fee shall be grounds for denial of the subdivision application by the Planning Board.
 - d. Review fees may only be spent by the Planning Board for services rendered in connection with the subdivision project from which they were collected. Accrued interest may also be spent for this purpose. At the completion of the Board's review of a project, any excess amount in the account, including interest, attributable to a subdivision application, shall be repaid to the applicant or the applicant's successor in interest. A final report of said account shall be made available to the applicant successor in interest. For the purpose of regulation, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest.
 - e. Any subdivision may take an administrative appeal to the Board of Selectmen concerning the Planning Board's selection of outside consultant. The grounds for such and appeal shall be limited to claims that the consultant selected has conflict of interest or does not possess the minimum, required qualifications. The minimum qualifications shall consist either of an educational degree in or related to the field at issue, or three (3) or more years of practice in the field at issue or a related field. The required time limit for action upon application by the Planning Board shall be extended by the duration of the administrative appeal. In the event that no decision is made by the Board of Selectmen within one (1) month following the filing of the appeal, the selection made by the Planning Board shall stand.
- B. Planning Board Procedure. The following are the steps the Planning Board must follow in dealing with a subdivision.
- 1. When a preliminary plan is submitted, it must be carefully reviewed for completeness (§ 322-7B of Chapter 322, Subdivision of Land) and conformity with your standards (Part 4, Design Standards, of Chapter 322, Subdivision of Land). It is a good idea at this stage to discuss the plan with the Board of Public Works and any others who will get involved.
 - 2. Within forth-five (45) days of submission you must notify both the applicant and the Town Clerk by Certified Mail of action on the plan. (MGL c.41, §. 81S)

3. Upon receipt of definitive plan you must set up a Public Hearing (§ 322-8E of Chapter 322, Subdivision of Land). You pick the date and advertise notice of hearing in each of two (2) weeks, the first at least fourteen (14) days prior to the hearing. You must mail a copy of the advertisement (certified mail is a good idea but not required) to the applicant and to each abutter, as taken from the most recent tax list. (MGL c.41, §. 81T)
4. As soon as possible, you must take a copy of the Plan to the Board of Public Works and to any other interested group. (The Board of Health gets a copy from the Planning Board.)
5. Following the hearing the Board must act on the plan then notify the applicant of your action by registered mail and file a copy of your action with the Town Clerk (§ 322-8G of Chapter 322, Subdivision of Land). The definitive plan is approved by default if not acted on by the Planning Board within one hundred thirty-five (135) days of submission where no preliminary plan was submitted or within ninety (90) days of submission where a preliminary plan was acted on by the Planning Board. (MGL c.41, §. 81U)
6. Before signing the plan, you must wait the twenty-day appeal period and receive security from the developer. If security is a bond, the Town Counsel and Town Treasurer should check it. (The amount should be agreed upon by the Board of Public Works.). If security is a covenant, the Town Counsel should approve its form. (MGL c.41, §. 81V)
7. When the developer requests release of the security you must act within 45 days of his/her request, or it is automatically granted. The work done should be carefully inspected before action. If you approve the release, you send the applicant a notice suitable for recording, signed by a majority of the Board, to that effect. If you disapprove the release, you must notify both the applicant and the Town Clerk by registered mail, (MGL c.41, §. 81U).

§ 316-5. Street acceptances.

- A Street layout plans prepared by a registered land surveyor must be submitted to the Selectmen for acceptance procedure not later than the second Thursday in November. A public hearing will be called by the Selectmen with notice to all abutters. Petitioners prior to that hearing shall have obtained necessary documentation concerning release of fee in the street, and shall have obtained a report from the Board of Public Works relative to the condition of road.
- B. In recommending acceptance or not, the Planning Board will be guided by whether ways created subsequent to February 24, 1966 meet the current subdivision regulations requirements regarding design and construction; whether ways created between March 18, 1926 and February 24, 1966 meet subdivisions then in effect, requiring a forty- foot width; and whether ways created prior to March 18, 1926 are forty (40) feet width and meet current Board of Public Works requirements of adequacy.

§ 316-6. Mandatory referrals.

- A. All plans for parks, monuments, or public works buildings must be submitted to the Planning Board for review at least two (2) weeks prior to action by the Selectmen in inserting an Article regarding them in the Town Warrant (§§ 65-3 and 65-4).
- B. Persons or departments requesting such review should submit two (2) copies of a plan of the site drawn to scale, showing proposed structures, parking, landscaping, drainage; and the ground floor plan elevations of all proposed buildings and utilities.
- C. Persons or departments making submissions for review are urged to appear at a Planning Board meeting at the time of submission to explain their proposal.

§ 316-7. Special Permits

- A. A special permit from the Planning Board will be required in accordance with § 198-29A of Chapter 198, Zoning. A copy of the application shall be filed with the Town Clerk.
- B. The application is to be accompanied by:
 - 1. A fee as set forth in Chapter 306, Fees, to cover the costs of public hearing notices and related costs.
 - 2. Three (3) copies of the plans and specifications needed for the decision by the (SPGA), if any.
- C. The Board will schedule a public hearing at the earliest possible date, but no latter than sixty-five (65) days after filling the application depending on the availability of needed information and response from other interested boards and agencies, and publication time as required by MGL c.40A, §. 11
- D. The notice of the Public Hearing shall include:
 - 1. The name of the applicant.
 - 2. The location of the area or premises including a street address if any.
 - 3. The subject matter of the hearing.
 - 4. The date, time, and place of the hearing.
- E. Notice of Public Hearing shall be:
 - 1. Published in the newspaper of general circulation in the town once in each of two (2) successive weeks. The first publication may not be less than fourteen (14) days before the day of the hearing.

2. Posted in a conspicuous place in the Town Hall for a period of not less than fourteen (14) days before the day of the hearing.
 3. Mailed to parties in interest which shall include; the applicant, abutters, owners of land directly opposite on any public or private street or way, the owners of the land within three hundred (300) feet of the property line, Planning Board of every abutting city or town. (The assessors shall certify the names and addresses of parties in interest)
 4. Mailed to other individuals, boards or agencies as deemed advisable by this Board.
- F. If this Board has requested a review of special permit application by other boards or agencies shall make recommendations if so desired, and send them to the special permit granting authority within thirty-five days (35) after they receive the application. Failure of aboard to report within thirty-five (35) days shall be deemed no opposition.
- G. Within ninety days (90) following the date of the public hearing the SPGA shall take final action. If the Board fails to take final action within the ninety-day time limit, the Special Permit shall be deemed granted. NOTE: The issuance of a special permit requires a two-thirds vote of the Board with more than (5) members, a vote of at least four (4) members of the five-member board, and a unanimous vote of a three-member Board.
- H. Before granting a special permit, this Board shall find that the proposed use or activity is in compliance with all provisions and requirements of Chapter 198, Zoning, and in harmony with the general purpose and intent, and shall include a plan of all landscaping details, and shall be signed by a landscape architect when a site plan exceeds ten (10) parking space requirement, to be in compliance with Chapter 198, Zoning, and the Board requirement. (See § 198-8 of Chapter 198, Zoning.)
- I. Special permits may be issued subject to such conditions, safeguards or other limitations on time or use as the Board may impose for the protection of the neighboring uses or otherwise serving the purpose of Chapter 198, Zoning. Such conditions, safeguards and limitations shall be imposed in writing.
- J. The Board will keep a detailed record of its proceedings, which will indicate:
1. The vote of each member upon each question, including whether the member was absent or failed to vote;
 2. The reason or reasons for the Board's decision; and
 3. The official action taken.
- K. Upon granting a special permit, this Board shall;

1. File a copy of the decision with the record of its proceedings and plans if any with the Planning Board and the Town Clerk;
2. Mail a certified copy of the decision to the owner and to the applicant if other than the owner; and
3. Send a notice of the decision to the parties in interest and to persons who requested a notice at the public hearing.

L. A Special permit shall not take effect until;

1. The Town Clerk certifies on a copy of the decision issued by this Board to the owner that twenty days (20) have elapsed without filing of an appeal or that any appeal filed has been dismissed or denied; and
2. The certified copy of the Decision has been recorded at the owner's expense in the Registry of Deeds, indexed in the grantor index under the name of record owner, and noted on the owner's certificate of title.

M. If application is unfavorably acted upon, the applicant may not reapply within two (2) years except by

1. First requesting the Planning Board consent to such action.
2. The Planning Board, before voting on whether to give such consent, shall notify all parties in interest of the time and place when the question of such consent will be considered.
3. All but one (1) of the members of the Planning Board must consent.
4. This Board may allow reapplication after making findings of specific and material changes in the conditions upon which the unfavorable action was based and must describe such changes in the record of its proceedings.

N. Any application for a special permit may be withdrawn without prejudice by the petitioner prior to the publication of the first public hearing notice. Once the notice has been published a withdrawal without prejudice may only be with the approval of the Board.